

COVID-19 Legislative Update

Written by PACE, LLC, NACM's Washington Lobbyists

Summary and Current Outlook

Social distancing necessitated by COVID-19 has shut down more than 60% of the U.S. economy, creating a unique, temporary recession combined with the largest spike in unemployment in U.S. history. Congress has addressed this in a series of three legislative packages, to provide emergency funding for existing programs, as well as to help stabilize businesses that have had to shut their doors during the crisis.

The largest of the three packages by far was the Coronavirus Aid, Relief, and Economic Security (**CARES**) Act, which was signed into law on March 27, 2020. The legislation included several new programs to support businesses to maintain their payroll, along with other liquidity programs to keep larger business afloat during social distancing.

A summary of the minor collections provisions is included below.

Members of Congress have since left Washington, DC, to be in their home districts during social distancing and aren't expected to return until May 4th at the earliest. While initially House Speaker Pelosi wanted to move onto the next COVID-19 stimulus package with a focus on infrastructure, talks have shifted to another bipartisan round of economic stability measures and funding, similar to the CARES Act.

Collections Provisions Included in the Final CARES Act

The CARES Act included one section dealing with bankruptcy, which is summarized below. All of the provisions will sunset after one year, returning back to current law.

- Temporarily increases the eligibility threshold to file under Subchapter V of Chapter 11 of the U.S. Bankruptcy Code to businesses with less than \$7,500,000 of debt. The increase sunsets after one year and the eligibility threshold returns to \$2,725,625.
- Amends the definition of income in the Bankruptcy Code for Chapters 7 and 13 to exclude coronavirus-related payments from the federal government from being treated as "income" for purposes of filing bankruptcy.
- Clarifies that the calculation of disposable income for purposes of confirming a Chapter 13 plan shall not include coronavirus-related payments.
- Explicitly permits individuals and families currently in Chapter 13 to seek payment plan modifications if they are experiencing a material financial hardship due to the coronavirus pandemic, including extending their payments for up to seven years after their initial plan payment was due.

Of Concern: Collections Provisions Introduced in the House and Senate

Two bills have been introduced in the House and Senate that, while they are very unlikely to advance, are of concern to the credit community. NACM asks that members reach out to their House Member and their two Senators in opposition to S. 3565 and the very provisions that harm American manufacturers' ability to recoup losses in the event of bankruptcy. [See Sample Message] Call the Capitol Hill Switchboard at 202-224-3121, or send an email by visiting this

U.S. [Senate website](#) page or the [House of Representatives](#) website to locate your Congressional Representative.

H.R. 6379, the Take Responsibility for Workers and Families Act (Lowey, D-NY)

Negotiations leading up to the passage of the CARES Act involved lawmakers introducing many new legislative ideas, with an expectation that many would not be included in the final package. At one point, negotiations broke down for nearly a week, and House Democrats introduced their own version of the CARES Act, H.R. 6379, that was effectively their “wish list.” H.R. 6379 was largely ignored as the two sides came together eventually to pass the much more bipartisan CARES Act. As soon as progress started again on the CARES Act, H.R. 6379 was discarded, and hasn't seen any movement. NACM's Lobbyists **do not expect it to advance**.

Summary of H.R. 6379 Collections Provisions

H.R. 6379 contained language that would significantly impact debt collection throughout the duration of the emergency declaration. The prohibitions and limitations would go into effect on the date the bill is signed into law and would expire upon the termination of the national emergency declaration from the Federal Emergency Management Agency (FEMA). There are some actions which could not be commenced or continued until the 120-day period following the end of the COVID-19 emergency, which are noted below.

While debt collection which began before the date of enactment could continue, there would be serious curtailment of mechanisms to recoup payment. A debt collector—which would, by definition in the bill, include all NACM members—would not be able to do the following during the duration of the emergency:

1. Capitalize unpaid interest;
2. Apply a higher interest rate triggered by nonpayment;
3. Charge a fee triggered by nonpayment;
4. Sue or threaten to sue for nonpayment;
5. Continue litigation to collect a debt that was initiated before the emergency;
6. Submit or cause to be submitted a confession of judgment to any court;
7. Enforce a security interest through repossession or foreclosure;
8. Take or threaten to take any action to enforce collection of debt or for nonappearance at any hearing relating to a debt;
9. Commence or continue any action to collect a debt through garnishment of wages or Federal benefits, until after the 120-day period following the end of the emergency;
10. Cause or seek to cause the collection of a debt by levying funds from a bank account or by seizing any other assets of a consumer, until after the 120-day period following the end of the emergency;
11. Evictions; or
12. Disconnect or terminate utility services.

Collectors also would not be able to add any interest or fees to the debt collection once these restrictions have been removed, following the termination of the emergency declaration. The bill also would mandate that collectors communicate with consumers in writing only during the COVID-19 emergency and that the communication must indicate that it is for informational purposes only and not an attempt to collect a debt.

S. 3565, Small Business and Consumer Debt Collection Emergency Relief Act of 2020 (Brown, D-OH)

S. 3565 has, similarly, seen little attention. Originally introduced on March 22, the bill has not gained any additional cosponsors, indicating that Sen. Brown is not aggressively pushing the bill or asking other Senators to support it. NACM's Lobbyists have not heard anything about the bill from Financial Services Committee staff. At this point, it remains just a messaging bill for Senator Brown.

From a policy perspective, S. 3565 is substantively almost identical to the debt collection language proposed in the House appropriations bill, H.R. 6379. The primary difference is that the time period begins the day after the President declared a major disaster and/or the day after the date of enactment of the Act and ends 120 days after the end of COVID-19 emergency.

This means that some provisions could be back-dated to March 11, 2020, the date of the federal emergency declaration, and that all prohibitions/restrictions would terminate 120 days following the end of the emergency declaration, as opposed to only a few provisions in the House bill that include this extended timeframe. The bill would go into effective whenever the president declares a national emergency (but would not apply in the event of a regional emergency, such as a hurricane).

If advanced, S. 3565 includes the same restrictions and prohibitions on collecting a debt as H.R. 6379, including prohibiting the addition of fees or interest on past due balances following the end of the incident period, and also mandates communication in writing only and for the sole purpose of providing information.

SAMPLE MESSAGE to Senators and Congressional Representatives

[DATE]

[Senator / Representative]

Room # [Office Building]

[Address]

Dear [Senator/Representative]:

On behalf of [business] and our [# of employees], I write to express concern with changes to the U.S. trade collections process that could jeopardize the U.S. product supply chain and the ability of many small businesses to access the product they need to serve their customers. In particular, provisions like those included in S. 3565, the Small Business and Consumer Debt Collection Emergency Relief Act of 2020, while well-intentioned, would have a negative ripple effect across the U.S. trade and manufacturing industries.

Our business is one of thousands that, collectively, are represented by the National Association of Credit Management (NACM). The vast majority of NACM members are small manufacturing or product-based businesses that provide products – from steel to paper products – to retailers and contractors across the country. These products are commonly provided in the form of unsecured credit to businesses, which are paid off when sold.